



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0552; FRL-10005-75-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia;

Negative Declaration for the Oil and Gas Control Techniques Guideline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the District of Columbia. This revision pertains to a negative declaration for the October 2016 Oil and Natural Gas Control Techniques Guideline (CTG) (2016 Oil and Gas CTG). This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2019-0552. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “**For Further Information Contact**” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2021. Mr. Schulingkamp can also be reached via electronic mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 2019 (84 FR 64244), EPA published a notice of proposed rulemaking (NPRM) for the District of Columbia. In the NPRM, EPA proposed approval of the District's SIP revision concerning the negative declaration for the 2016 Oil and Gas CTG. The formal SIP revision was submitted by the District on July 17, 2019. For additional information on the CTG please see the NPRM.

II. Summary of SIP Revision and EPA Analysis

In its submittal, the District of Columbia's Department of Energy and Environment (DOEE) conducted a search of its sources to determine if the District has any sources that fall within the applicability of the 2016 Oil and Gas CTG. DOEE reviewed the following sources of information: DOEE's Air Quality Division's permitting database for potential sources subject to the 2016 Oil and Gas CTG, the Energy Information Administration's data regarding natural gas pipelines and areas of oil and gas development, the Department of Homeland Security's database of critical infrastructure which includes natural gas compressor stations, the District's Department of Consumer and Regulatory Affairs database which would include a basic business license for broad categories of businesses, and the District's point and area source inventory. Within each database or system reviewed, the District found no sources subject to the 2016 Oil

and Gas CTG. After completing this search, the District has declared that no sources subject to the 2016 Oil and Gas CTG exist within the District.

III. Response to Comments

EPA received five sets of anonymous comments in response to the NPRM, two of which were duplicative.

Comment 1: One commenter stated that approval of the District’s negative declaration, “might set a dangerous precedent for the further regulation and control of the emissions of volatile organic compounds (VOCs),” and could cause, “a much larger issue for the future control of VOCs.”

Response 1: EPA understands the commenter’s concern with regards to setting a precedent, however, EPA has historically allowed states to submit a negative declaration for a particular CTG category if the state finds that no sources exist in the state which would be subject to that CTG. EPA has addressed the idea of negative declarations numerous times and for various national ambient air quality standards (NAAQS) including in the General Preamble to the 1990 Amendments,¹ the 2006 RACT Q&A Memo,² and the 2008 Ozone Implementation Rule.³ In each of these documents, EPA asserted that if no sources exist in the nonattainment area for a particular CTG category, the state would be allowed to submit a negative declaration SIP revision.

¹ “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” (57 FR 13498 at 13512 (April 16, 1992)).

² “RACT Qs & As – Reasonably Available Control Technology (RACT): Questions and Answers” Memorandum from William T. Harnett, May 18, 2006.

³ “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,” (80 FR 12263 at 12278 (March 6, 2015)).

In addition, EPA has approved negative declarations in the past for this CTG category in other states as well as other CTG categories for the District. For example, EPA has approved negative declarations for the District for the following categories with respect to the 1997 ozone NAAQS: Automotive and Light-duty Truck Manufacturing; Storage of Petroleum Liquids in Fixed-roof Tanks; Bulk Gasoline Plants; Petroleum Refinery Sources; Graphic Arts Systems; Shipbuilding and Repair; Wood Furniture Coatings; and more. *See* 74 FR 28447 (June 16, 2009) and 74 FR 12778 (March 25, 2009). More recently EPA approved negative declarations for the 2008 ozone NAAQS for these same CTG categories. *See* 84 FR 54507 (October 10, 2019). With respect to the 2016 Oil and Gas CTG, EPA has already approved negative declarations for Delaware, Indiana, Vermont, and California’s El Dorado County and Yolo-Solano Air Quality Management Districts.⁴ Thus, no precedent is being set by approving the District’s negative declaration with respect to the 2016 Oil and Gas CTG.

Comment 2: One commenter stated that economic effects should be considered, particularly whether the SIP revision will, “harm the economy to compensate for the environment and if the benefits of doing so exceed the harm it will cause.”

Response 2: EPA disagrees with this comment. In the case of a negative declaration, the state is merely certifying that no sources exist which would necessitate a regulation being developed for a CTG category. Because there are no sources in the District that could potentially be subject to the 2016 Oil and Gas CTG, the District does not have to develop and implement a regulation to meet the RACT requirements of the CTG, and thus, no costs will be imposed on sources in the

⁴ See 84 FR 32624 (July 9, 2019) for Delaware, 84 FR 68050 (December 13, 2019) for Indiana, 84 FR 65009 (November 26, 2019) for Vermont, 83 FR 67696 (December 31, 2018) for El Dorado, and 83 FR 31072 (July 3, 2018) for Yolo-Solano.

District.

Comment 3: One commenter explained that ozone nonattainment areas classified as Moderate or higher must implement RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990 and the date of attainment; the commenter suggested that EPA should update this date to reflect regulations made in current environmental conditions.

Response 3: The November 15, 1990 date is established by statute in CAA section 182(b)(2). EPA cannot through rulemaking change this date. Changing this date would require legislation passed by Congress and signed by the President into law.

Comment 4: One commenter suggested EPA should disapprove the District's SIP pending review by the "OSG Intergovernmental Panel on Climate Change (IPCC) and other available independent scientific assessments of risks and impacts." The commenter claims that EPA is unable to predict accurately how these gases will alter the climate system over the next century. The commenter also suggested EPA disapprove the District's SIP because nothing in the negative declaration accounts for future development in the oil and natural gas field. The commenter claims that EPA must require a regulation to ensure future compliance with the CTG and not allow the District to increase emissions of VOCs or greenhouse gases (GHGs) like methane.

Response 4: First, with respect to disapproving the District's SIP pending external review, EPA disagrees with the commenter. Nothing in the District's negative declaration SIP revision requires external review with respect to climate change because the negative declaration is merely certifying that no sources in the District are subject to the 2016 Oil and Gas CTG. A

review of climate change, or its impacts, are not relevant to the District's SIP revision.

Second, with respect to disapproving the District's SIP because the SIP revision does not account for future development and does not contain a regulation to ensure future compliance with the CTG or restrict emissions of VOCs and GHGs, EPA disagrees with the commenter. Nothing in the CAA or EPA's implementing rules or guidance suggests that states must have a SIP-approved regulation for a category of CTG sources that does not exist in the state. Should a new source of the type covered by the existing CTG be constructed in a state after approval of a negative declaration, EPA expects the state to develop a regulation and submit it to EPA for approval into the SIP in accordance with the relevant timing provided for by the CAA. At this time, because the District does not have any sources subject to the 2016 Oil and Gas CTG, no regulation is required to be developed and submitted to EPA for SIP approval.

IV. Final Action

EPA is approving the District's SIP revision concerning the negative declaration for the 2016 Oil and Gas CTG, which was submitted on July 17, 2019.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action

for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the District's negative declaration for the 2016 Oil and Gas CTG, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 12, 2020.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. Amend § 52.470 in the table in paragraph (e) by adding an entry for “Negative Declaration for the 2016 Oil and Natural Gas CTG” at the end of the table to read as follows:

§ 52.470 Identification of plan.

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(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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Negative Declaration for the 2016 Oil and Natural Gas CTG	District of Columbia	7/17/19	<u>[Insert date of publication in the Federal Register],</u> <u>[Insert Federal Register citation]</u>	Docket 2019-0552

[FR Doc. 2020-03670 Filed: 3/5/2020 8:45 am; Publication Date: 3/6/2020]